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ABSTRACT

The statement reviews experience of the Department of Justice with cases of child abuse in institutions, discusses the extent of the problem, and proposes some remedies for prevention of abuse of institutionalized children. The decisions of four court cases in three states are reported to demonstrate the type of child abuse occurring in institutions. Suggested remedies for the widespread abuse are derived from existing court orders for remedial measures and include enjoining the use of medication as a punishment, limiting the use of mechanical restraints, ensuring that buildings are clean and conducive to good health, phasing out large isolated institutions for the retarded, and prohibiting of physical abuse of residents of juvenile detention facilities. (DB)

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STATEMENT

OF

MARY LYNN WALKER
ACTING DEPUTY ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

BEFORE

THE

COMMITTEE ON EDUCATION AND LABOR
SUBCOMMITTEE ON SELECT EDUCATION
U.S. HOUSE OF REPRESENTATIVES

CONCERNING

THE ABUSE OF CHILDREN IN INSTITUTIONS

ON

DECEMBER 4, 1980

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TESTIMONY OF MARY LYNN WALKER BEFORE THE SUB-COMMITTEE ON SELECT EDUCATION COMMITTEE ON EDUCATION AND LABOR, U.S. HOUSE OF REPRESENTATIVES

DECEMBER 4, 1980

I thank the Subcommittee for this opportunity to appear today at this oversight hearing on the implementation of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, P.L. 95-266. Prior to assuming my present position, I was Chief of the Special Litigation Section of the Civil Rights Division, which is responsible for our litigation to protect the rights of institutionalized persons. My remarks will focus on the activities of the Department of Justice regarding the abuse of children in institutions.

As defined in the Child Abuse Prevention and Treatment Act, (and amended by P.L. 95-266), child abuse and neglect means the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of eighteen or the age specified by the child protection law of the State in question, by a person responsible for the child's welfare under circumstances which harm or threaten the child's health or welfare, 42 U.S.C. 5102. When this legislation was originally enacted in 1974, the definition was intentionally written broadly enough to take into account the fact that, for many of our nation's children, the person responsible for their welfare is employed by some kind of institution. The Department of Justice has, since 1971, been involved as an intervenor or litigating amicus curiae in a number of cases concerning the constitutional and federal statutory rights of confined persons, and in several of those cases there has been substantial evidence of abuse of children, as defined in the legislation which is the subject of these hearings.

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As you know, Public Law 96-247 was enacted on May 23rd of this year, giving the Attorney General explicit authority to institute suits against particular classes of institutions where the Attorney General has reasonable grounds to believe that persons are being deprived of their federal statutory or constitutional rights. When Assistant Attorney General Drew S. Days, III testified before the Senate and House subcommittees at hearings on the bills which led to this statute, he stated that there were two reasons why such authorizing legislation was necessary. The first was that the experience of the Department in the litigation to which I referred earlier has demonstrated that basic constitutional and federal statutory rights of persons confined in institutions are being violated on such a systematic and widespread basis that the problem warrants the attention of the federal government. The second reason why an authorizing statute was needed stemmed from the fact that some courts had held that the federal government lacked the power to bring such suits absent authorization from Congress.[1/] One court had suggested that the United States lacked the requisite standing to intervene in an ongoing private suit.[2/] With the passage of the legislation, the standing problem has been eliminated and the Department will be able to continue

1/ United States v. Solomon, 419 F. Supp. 358 (D. Md. 1976), aff'd, 563 F.2d 1121 (4th Cir. 1977); United States v. Mattson, No. CV74-138-BU (D. Mont.), aff'd, 600 F.2d 1295 (9th Cir. 1979).

2/ Alexander v. Hall, No. CA 72-209 (D. S.C., June 16, 1978).

to seek to secure reform of egregious and flagrant conditions of confinement for institutionalized children and others.

I have some specific comments about the abuse of children in institutions with which the Department of Justice is familiar through its litigation, our perception of the extent of the problem, and some suggestions for effective remedies for institutional abuse of children.

Experience of the Department of Justice

Beginning with our experience, the Department has participated in cases involving several kinds of institutions in which persons under eighteen years of age are confined, including public facilities for mentally ill and mentally retarded persons and for juveniles. In those cases, the following types of abuses against children have been found to have occurred.

In a case styled Gary W. and United States v. Stewart, No. CA 74-2412-C (E.D. La. October 29, 1975), the federal district court found that the State of Louisiana had placed delinquent and dependent children in private care facilities in the State of Texas where in some cases children were being abused and overdrugged and in which treatment was inadequate. When the medical experts employed by the United States in its capacity as plaintiff-intervenor visited a private child care facility in Houston, Texas, they found a 7-year old severely mentally retarded boy in such a malnourished state that he was near death. We sought and obtained from the district court an emergency order requiring Louisiana

state officers to remove the child from the facility and to transport him to a nearby medical center.[3/] I am happy to report that his life was saved. After trial of the case, the court entered an order detailing the following conditions found in the private facilities in Texas:[4/]

> -- children tied, handcuffed or chained together or to fixtures as a means of control and discipline;
>
> -- children being fed while lying down, which created a danger of food being aspirated into their lungs;
>
> -- excessive use of psychotropic drugs coupled with unsafe storage and administration of drugs;
>
> -- mentally retarded children being cared for by other mentally retarded children;
>
> -- confining children to cribs as virtual cages;
>
> -- discretion given to ward attendants to use restraints as needed;
>
> -- in one institution, an administrator who abused children by hitting them with her hand or a soup ladle and who tied one child to her bed or kept her in a high chair all day;
>
> -- lack of programs of physical care and stimulation so that children actually regressed while in the facilities.

3/ Order of October 29, 1975.

4/ Order of July 26, 1976.

The court's order required the State of Louisiana to assure that out-of-state facilities in which children were placed meet minimum standards of care and treatment and ordered the state to remove children from the worst facilities.

The United States also intervened in a case involving the Pennhurst State School and Hospital, located in Spring City, Pennsylvania, Halderman, et al., v. Pennhurst State School and Hospital, et al., 446 F. Supp. 1295 (E.D. Pa. (1977) 612 F.2d 84 (3d Cir. 1979), cert. granted June 9, 1980). A residential institution for the mentally retarded, Pennhurst at the time of trial housed approximately 1230 persons, many of them children. The following are examples of the abuse suffered by children at Pennhurst as found by the district court.

-- In 1972, an eleven year old resident strangled to death when tied in a chair in "soft" restraints.

-- One of the named plaintiffs, admitted when she was twelve years old, had 40 reported injuries on her medical records in the eleven years she was at Pennhurst, including the loss of several teeth, a fractured jaw, fractured fingers and a toe and numerous lacerations, cuts, scratches and bites. Although she had a limited vocabulary at the time of her admission, she was no longer speaking at the time of trial.

-- One parent testified that in seven years of weekly visits to her son, there were only four occasions on which he was not injured. She reported at trial that she had recently observed cigarette burns on his chest.

-- Another child was hospitalized for two weeks because of head and face injuries received as a result of a beating by another resident.

-- A 17 year old blind and retarded girl who could walk was found by her parents strapped to a wheelchair by a straightjacket. She had experienced regression while at Pennhurst as a result of a lack of activities and spent most of her time sitting and rocking.

The children at Pennhurst were also subjected to the general poor conditions in the institution which affected the adult residents. Furthermore, routine housekeeping services were not available during evenings and weekends with the result that urine and feces were commonly found on the ward floors during these periods. There were often outbreaks of pinworms and other infectious diseases. The Court found that "[o]bnoxious odors and excessive noise permeate the atmosphere at Pennhurst" and that "[s]uch conditions are not conducive to habilitation," Opinion, supra, at 1308. As in the Texas institutions in the Gary W. case, the court also found excessive use of psychotropic drugs as a control mechanism.

Conditions equally atrocious were found to exist in the Willowbrook State School for the Mentally Retarded in New York. The United States participated in the Willowbrook litigation as litigating amicus curiae,[6/] and the case was mentioned in connection with Congressional consideration of the Bill of Rights for the Developmentally Disabled.[7/] The failure of the staff at Willowbrook to protect the physical safety of the children housed there is evidenced by the testimony of parents that their children had suffered, inter alia,

> loss of an eye, the breaking of teeth, the loss of part of an ear bitten off by another resident, and frequent bruises and scalp wounds * * *.

357 F. Supp., supra, at 756. During the trial the United States presented evidence of severe skill regression, loss of IQ points, and loss of basic physical abilities such as walking, during the time that the children were housed in what was known as the Baby Complex at Willowbrook. The average eleven year old child in the Complex weighed 45 lbs. as compared to the weight of an average eleven year old of 80 lbs.

6/ New York State Association for Retarded Children, Inc. and Parisi v. Rockefeller, 357 F. Supp. 752 (E.D. N.Y. 1973) and NYSARC v. Carey, 393 F. Supp. 715 (E.D. N.Y. 1975) (consent decree).

7/ 121 Cong. Rec. 29820 (1975).

Turning to another type of facility, the United States participated as litigating amicus curiae in Morales v. Turman,[8/] by order of the court, to assist in determining the facts concerning the Texas state juvenile reformatories in which minors adjudged delinquent were involuntarily committed.

The district court in that case found a climate of brutality, repression, and fear, 364 F. Supp. at 170. Correctional officers at the Mountain View State School for Boys administered physical abuse including slapping, punching, and kicking of residents, some of whom had committed only such "status" offenses as truancy or running away from home. An extreme form of physical abuse used at the facility was known as "racking" and consisted of requiring the inmate to stand against the wall with his hands in his pockets while he was struck a number of times by blows from the fists of correctional officers.

Another form of abuse found by the court was the use of tear gas in situations where no riot or other disturbance was imminent. On inmate was tear-gassed while locked in his cell for failure to work, another was gassed for fleeing from a beating he was receiving, and another was gassed while being held by two 200 lb. correctional officers.

8/ 364 F. Supp. 166 (E.D. Tex. 1973) and 383 F. Sup. 53 (E.D. Tex. 1974); rev'd for absence of a three-judge court, 535 F.2d 864 (5th Cir. 1976); rev'd and remanded for further proceedings, 430 U.S. 322 (1977); 562 F.2d 993 (5th Cir. 1977) (remanded for evidentiary hearing concerning whether there are changed circumstances).

Juveniles were sometimes confined in security facilities consisting of small rooms or cells, for up to one month, for conduct not seriously disruptive or threatening to the safety of other persons or valuable property. Expert witnesses testified that such solitary confinement is an extreme measure which should only be used in emergencies to calm uncontrollably violent behavior. Experts agreed that when a child is left entirely alone for long periods, the resulting sensory deprivation can be harmful to mental health.

In addition to the harmful effects of the solitary confinement, inmates in some security facilities were required to perform repetitious make-work tasks, such as pulling up grass without bending their knees or buffing a floor for hours with a rag.

Of necessity, I am able today to give the Subcommittee only a few illustrative examples of abuse of institutionalized children, and I invite you to examine some of the reported court decisions to which I have referred, the citations to which are given in my written statement. I have confined my examples today to those which have been found in cases already decided rather than from cases which are presently pending in the courts. I wish to emphasize that by mentioning these cases I do not intend to single out the states involved for special reproach. We have seen similar conditions in twelve cases from eleven other states.

Extent of the Problem

That brings me to the second issue which I wish to address today--the Department's perception of the extent of the problem.

I think it would be safe to say that abuse of children in institutions is a wide-spread and serious problem, using the broad definition of child abuse contained in the Child Abuse Prevention and Treatment Act. Just judging from the cases which have been or are being litigated and from our investigation of other institutions in which suits by the Attorney General have been dismissed for lack of statutory authority, practices which deny children and adults in institutions of basic constitutional rights are quite widespread. It is that perception which led the Department to support the passage of Public Law 96-247 so that the Attorney General would have the clear authority to initiate suits where they are most needed rather than having to wait until private litigants have brought suits in which we can seek to participate.

Remedies For Abuse of Children In Institutions

I will comment only briefly on effective methods for dealing with institutional abuse of children. As a representative of a primarily litigating agency, I would not hold myself out as an expert on this issue. What I can tell you is that, when the Department of Justice represents the interests of the United States in cases dealing with abuse of children in institutions, we investigate to find the facts concerning each institution and employ persons who are experts in the substantive areas to give opinions about what is wrong and what can or should be done about it. We approach the question of remedy on a case-by-case

basis, and ask the courts to take the remedial measures which are appropriate to the conditions which it has found to exist.

What would like to do, briefly, is to give an overview of the kinds of relief which have been ordered by the courts to address some of the types of abuse which I spoke about earlier.

For example, courts have enjoined the use of medication as a punishment, for the convenience of the staff, as a substitute for programming, or in quantities that interfere with the residents' functioning. Similarly, limitations have been placed on the use of mechanical restraints so that they are used only when necessary to prevent injury to the individual resident or others or to promote physical functioning. Courts have also held that restraints may be used only upon the order of a qualified professional for a specified time and renewed only by the professional, and that the person in restraints must be checked at regular intervals to prevent harm from occurring.

Institutional officials have been ordered to take every precaution to see that the buildings in which persons reside are kept clean and conducive to good health. Wheelchairs must be provided for those residents who require them. The feeding of residents while they are lying flat has been prohibited because of the dangers of aspiration. Medical and other health-related services have been required to be provided, and increased security procedures have been required to protect residents from injury.

In the mental retardation area, the courts have in some cases concluded that large, isolated institutions some of which have been in use since the mid-nineteenth century, do not comport with current generally accepted professional standards of care and that persons confined therein should be evaluated on an individual basis for appropriate placement in community-based facilities. Thus, these courts have ordered the phasing out of the institutions and have provided for some of the measures I described above, as interim relief.

In the context of juvenile detention facilities, the courts have prohibited physical abuse of residents; the use of tear gas as a punitive measure; the unlimited use of solitary confinement; forcing children to remain silent for long periods of time; and, for those whose mother-tongue is some other language, requiring them to speak only English.

Racial segregation of juveniles has been prohibited.

When juveniles are placed in solitary confinement, some courts have required that counselling be provided and that the juveniles be visited at least once a day by a case worker or a nurse.

Make-work assignments have been forbidden.

Institutions have been required to screen their employees to eliminate persons who are potentially abusive to children.

These are illustrative of some effective methods of dealing with particular kinds of abuse of children in institutions. As stated earlier, each case must be approached on its own facts.

I would like to leave you with one thought about the problem which is the subject of these hearings. Children in institutions are peculiarly unable to articulate their rights and to use the courts to redress deprivations of those rights. It is unfortunate that resort to the legal system has been increasingly necessary to secure the basic rights for institutionalized persons to which all citizens are entitled. However, while that forum is needed, I believe that the United States, through the Attorney General, can be an effective advocate for those unable to speak for themselves, and I believe that Congress has taken a very important step by enacting legislation which will provide a firm basis for fulfilling the commitment of the United States to constitutional treatment of all institutionalized persons.

This concludes my prepared statement. I will be happy to respond to any questions you may have.